

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LENNIE T. DAVIDSON,

Plaintiff,

Civil No. 10-575-BR

v.

ORDER

MAX WILLIAMS, et al.,

Defendants.

BROWN, Judge.

Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 in which he challenges the conditions of his confinement. On December 1, 2010, Defendants filed an Un-enumerated 12B Motion to Dismiss (#25) based on plaintiff's alleged failure to exhaust his administrative remedies.

The Ninth Circuit has determined that inmates are entitled to notice under *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) before being required to respond to a motion to dismiss for failing to exhaust administrative remedies. See *Wyatt v. Terhune*, 315 F.3d

1108, 1120 n.14 (9th Cir. 2003). Accordingly, plaintiff is ADVISED as follows:

NOTICE - WARNING

***This Notice is Required to be Given
to You by the Court***

Defendants have filed an unenumerated Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b) based on your alleged failure to exhaust your administrative remedies. Such a motion, if granted, will end your case.

When a party you are suing makes such a motion to dismiss for failure to exhaust that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says or make general allegations about what you may be able to prove. Instead, you must set out specific facts in declarations or other authenticated documents, that contradict the facts shown in the defendants' declarations and documents. If you do not submit your own evidence in opposition, and the defendants' evidence establishes that you did not exhaust your administrative remedies, defendants' motion to dismiss will be granted and your case will be dismissed.

CONCLUSION

Plaintiff shall have until January 4, 2011, to submit evidence in response to defendants' Motion to Dismiss (#25). Defendants shall have until January 18, 2011, to file a reply. Defendants' Motion to Dismiss (#25) shall be taken UNDER ADVISEMENT on January 13, 2011.

IT IS SO ORDERED

DATED this 2nd day of December, 2010.

/s/ Anna J. Brown

ANNA J. BROWN

United States District Judge